



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# MICHIGAN LAW REVIEW

---

VOL. VI

DECEMBER, 1907

No. 2

---

## THE CONSTITUTION OF OKLAHOMA

THE constitution of the latest state to be admitted to the Federal Union contains many interesting features, some significant of recent tendencies in state government, and others distinctly novel, which suggest queries as to the probable trend of future development. Public attention has already been attracted to some of the most striking provisions; and a more careful analysis of the constitution as a whole should be of value to those concerned in the problems of American government.

At the outset, one familiar with the constitution of the older states will be struck by the length of the Oklahoma document. It consists of ninety-four pages, closely printed, containing about 100,000 words, making it the longest of the state constitutions. The size of the constitution is of itself evidence that it contains much more than was considered constitutional matter in earlier days, and further examination shows that it includes a large amount of detail similar to statutory provisions; and this is indeed recognized by provisions authorizing the legislature to alter many sections of the constitution by statute.

The length and detail of the constitution is further an evidence of its most striking characteristic, which is illustrated in many other ways,—the tendency towards the forms of direct democratic government, in contrast with the representative ideal that has hitherto prevailed. The constitution is itself a considerable code of laws enacted by popular vote; and by its elaborate provisions closely limits the sphere of action of all public officials. This tendency towards direct democratic government is also shown by the long list of elective officers, by the requirement for a mandatory direct nomination law, and, above all, by the provisions for the popular initiative and referendum on all matters of state and local legislation.

Article I on Federal Relations is a new title in state constitutions, and is significant of the increasing importance of the national government, which has required a clear recognition of the Federal Union and has insisted on a number of other provisions as conditions for the admission of the state. The various clauses of this article acknowledge that the state is an inseparable part of the Federal Union, provide for religious toleration and prohibit polygamy, disclaim any title to Indian lands, assume the debt of Oklahoma Territory, require the establishment of public schools, repeat the provisions of the Fifteenth Amendment to the National Constitution in relation to the suffrage, and prohibit the liquor traffic in that part of the state formerly Indian Territory. In connection with such provisions a query may be raised as to the effect on the state if any of these should be omitted in a subsequent revision of the state constitution. Will violation of the conditions of admission cause the state to revert to the territorial status?

Article II, the Bill of Rights, contains the usual provisions under this head, and also a number of unusual items. Several sections supplement the statement of general principles with detailed provisions of a legislative character, such as providing for the composition of juries and the method of assessing damages for property taken for public use. Novel provisions are those prohibiting the transportation of persons out of the state for offenses committed within the state, and forbidding perpetuities, monopolies, primogeniture and entails.

In Article III on suffrage the usual qualifications are required, while additional sections provide that the legislature shall pass a mandatory direct nomination law for all state, district, county and municipal offices, including United States senators. Article IV on the distribution of powers has no novel features.

#### INITIATIVE AND REFERENDUM

Article V, the Legislative Department, contains radical provisions for the popular initiative and referendum on legislation. Section I states the general principle in a clear reservation to the people of legislative power, in these words: "The Legislative Authority of the State shall be vested in a Legislature, consisting of a Senate and House of Representatives; but the people reserve to themselves power to propose laws and amendments to the constitution, and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature."

Subsequent sections define the methods more specifically. Legis-

lative measures may be initiated by petition of eight per cent of the legal voters, and constitutional amendments by fifteen per cent. Referendum petitions require only five per cent of the voters, and must be filed not more than ninety days after the adjournment of the legislature. The referendum may be demanded on any item, section or part of an act; but may not be used as to laws necessary for the immediate preservation of the public peace, health or safety. The veto of the governor does not extend to measures voted on by the people.

The initiative and referendum are further reserved to the voters of every county, district and municipal corporations as to all legislation; but in these cases a larger percentage of voters is required.

During the discussion of the constitution it was argued that these provisions went so far in establishing a direct democratic government that it conflicted with the provisions of the national constitution guaranteeing to every state a "republican" form of government. To meet this objection, another section was added, that the powers of the initiative and referendum "shall not deprive the legislature of the right to repeal any law, propose or pass any measure which may be consistent with the constitution of the state and the Constitution of the United States."

In the sections for the organization of the legislature there are no novel principles. The members of the house of representatives will have a two-year term, and the senators four years, one-half retiring each second year. The districts for the election of members of both houses are described at length; and it is reported that the state has been gerrymandered in the interest of the democratic party. There is, however, a significant group of eleven sections conferring positive power on the legislature, which of itself indicates a change from the older type of state constitution, where the legislature has no specified powers, but can exercise legislative authority except as specifically limited. The list of specified powers in the Oklahoma constitution includes a general grant of authority over "all rightful subjects of legislation," with a proviso that specific grants shall not work as a restriction or limitation. The specific grants include a number of comparatively unimportant items, such as one authorizing laws to empower cities to pension meritorious and disabled firemen. Matters of this kind would be in the power of the legislature without enumeration; and there seems no good reason for most of these items. Other sections are mandatory in form, requiring the legislature to enact laws on certain subjects; but these can have no more than a moral influence, as there are no legal methods for compelling a legislature to act.

Limitations on the legislature are numerous. The most important are those prohibiting local or special laws, for which there is a list of twenty-seven forbidden items, including laws regulating the affairs of counties, cities, towns, wards or school districts; on elections; regulating the practice or jurisdiction of courts and limitation of actions. In addition there is a general provision that "Laws of a general nature shall have a uniform application throughout the state, and where a general law can be made applicable no special law shall be enacted." And still another, for such special or local laws as may be permitted, there must be public notice in local newspapers for four continuous weeks before introduction in the legislature. These provisions show a determined effort to restrict closely the field of special legislation, and to prevent the passage of any laws of this class without ample notice to the local district concerned.

In the article on the executive department, the most notable feature is the long list of executive officials. This includes the governor, lieutenant-governor, secretary of state, state auditor, attorney general, state treasurer, state examiner and inspector, superintendent of public instruction, commissioner of labor, insurance commissioner, chief inspector of mines, oil and gas, and commissioner of charities and correction. A later article provides for a corporation commission of three elective members. This, it is believed, is a much larger number of elective state officers than in any other state; and it can hardly be possible that many of the voters can exercise any power of discrimination in voting for candidates for so many positions. This numerous list also gives greater permanence to the regime of unorganized administrative officials, and will prevent the legislature from organizing a systematic plan of executive departments, as in the national government.

The governor is given the usual powers to cause the laws to be executed, to command the militia, to grant pardon, and to disapprove legislative bills, subject to a two-third vote of each house. The veto power may be applied also to items in appropriation bills. The elective executive officers have a four-year term.

#### CORPORATIONS

One of the longest articles in the constitution is that on corporations. It covers fourteen pages, and contains a great amount of statutory detail, including long sections that have been copied bodily from the new interstate commerce act. Most of the article deals with railroads and public service corporations, which are placed under the supervision of the corporation commission. The com-

mission is authorized to correct errors and prevent unjust discrimination; and to that end can prescribe rates, classifications in traffic, rules and regulations and requirements as to service and facilities. It has full power to require reports and to investigate the books and papers of such corporations, with the authority of a court of record to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt committed in its presence and to enforce compliance with all its lawful orders. Appeals from the orders of the commission shall be direct to the Supreme Court of the state; but no action of the commission providing rates or classifications may be delayed or suspended before a final decision by the Supreme Court, unless a suspending bond is executed to ensure the prompt refunding of any charges in excess of those fixed by the final decision of the court. On such appeals no new evidence may be introduced; and if the court reverses any order of the commission it must substitute therefore such orders as the commission should have made.

Another section abrogates the common law doctrine limiting the liability of employers for injuries done to employees through the negligence of a fellow servant, as to the employees of railroad, street railway and interurban companies, and of any employer engaged in mining. Rates of railroad passenger fare are also fixed in the constitution at a maximum of two cents a mile, subject to exemptions by the corporation commission where it can be proven that the two-cent rate will not yield a just compensation.

Private corporations can only be created under general laws. There are detailed provisions regulating the issue of stock, to prevent the consolidation of competitive companies, to control foreign corporations, and prohibiting lower rates in one part of the state than in another for the purpose of destroying competition.

#### MUNICIPAL CORPORATIONS

A partial exception to the prohibition on special legislation on local government is found in the provision authorizing general laws on municipal corporations to classify such corporations in proportion to population. Further variations in the organization of municipal government are permitted by the provisions authorizing any city of more than two thousand inhabitants to frame its own charter by a board of freeholders elected within the city. The procedure in reference to such boards and charters is regulated in some detail. The charter must be approved by the voters of the city and must be submitted to the governor for his approval, if it does not conflict with the constitution and laws of the state.

As already noted, the powers of the initiative and referendum are also reserved to the people of every municipal corporation; but petitions in this case require the signature of twenty-five per cent of the votes cast at the preceding elections.

A sweeping section gives every municipal corporation the right "to engage in any enterprise which may be engaged in by a person, firm or corporation by virtue of a franchise from said corporation," and financial power necessary to make this grant to some degree effective is authorized in the article on finances. It is there provided that any incorporated city or town may incur debt over the ordinary debt limit, for the purchase or construction of public utilities, by a majority vote of the *tax paying* voters, provided that a tax is levied to pay interest and establish a sinking fund for the principal within twenty-five years. No franchise may be granted without the approval of the voters, and none may be granted for a term longer than twenty-five years. No franchise shall divest the state or the subdivisions of the control over the streets and other public grounds; the power to regulate charges shall not be surrendered; and no exclusive franchise shall be granted. Under these conditions, it is probable that water and lighting plants may be established, but a street railway system of any importance could hardly be undertaken. No provision is made for borrowing money by mortgaging a particular enterprise, and the framers of the constitution have failed to recognize the distinction between loans that may properly be met by taxation and loans for revenue producing enterprises which should be met by the income from such undertakings.

The remaining articles of the constitution contain little that is strikingly original, and they cannot be even briefly discussed within the limits of this paper. There are articles on the judicial department, impeachments and removals from office, revenue and taxation, state and school lands, homesteads and exemptions, education, banks and banking, oath of office, roads, highways and public works, counties, insurance, manufactures and commerce, public institutions, alien and corporate ownership, miscellaneous and constitutional amendments, with the usual schedule. The above list shows some titles that are unusual in state constitutions; but the provisions are similar to those in the statutes of other states, and their presence in the Oklahoma constitution is simply further evidence of the general character of the document as a compilation of laws. This is seen again in the specified descriptions of county boundaries. And an extreme instance of detail is found in the section establishing the standard flash and specific gravity tests for oil.

A separate article, submitted apart from the main body of the constitution, and adopted, extends the prohibition of the liquor traffic to include the whole of the new state. This article also goes into minute details.

The order of arrangement of the various articles shows a lack of systematic classification, which, however, is not peculiar to this constitution. Thus the articles on banking and insurance would more fittingly come after the article on corporations, or might have been included in that article. Within each article there is evident a more careful attempt than usual to group together those sections most closely related in thought. This is further emphasized by the use of subheadings within many articles, which serve to aid one in search of any particular item.

Looking at the constitution as a whole, it can fairly be characterized as marking a radical advance from the older state constitution, both in its detail and also in the emphasis on the forms of direct democratic government. But it must also be admitted that this advance is in the same general direction as other recent changes in state constitutional development, especially in the newer and more westerly states. The older ideal of a constitution has largely disappeared; and, for good or ill, the tendency of the times is towards a larger participation of the people in the every day work of government.

It does not follow that the older states will or should rapidly accept the novel features of the Oklahoma constitution. Many of those must be considered at best as experiments, and it will be wise to watch the results of the experiments before applying them on a larger scale. In the older states, with complicated social and industrial conditions, the older traditions and conservative influences are inevitably stronger. And it may be urged that even if these methods prove successful in Oklahoma, the same methods will not be adapted to conditions in other states.

JOHN A. FAIRLIE.

UNIVERSITY OF MICHIGAN.